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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/528,485	03/21/2005	Yukihiro Tatsumo	123254	8465
25944 7590 12/02/2008 OLIFF & BERRIDGE, PLC P.O. BOX 320850 ALEXANDRIA, VA 22320-4850				
EXAMINER				
AVERY, BRIDGET D				
ART UNIT		PAPER NUMBER		
3618				
MAIL DATE		DELIVERY MODE		
12/02/2008		PAPER		

**Please find below and/or attached an Office communication concerning this application or proceeding.**

The time period for reply, if any, is set in the attached communication.

# Office Action Summary

Application No.

10/528,485

Applicant(s)

TATSUNO ET AL.

Examiner

BRIDGET AVERY

Art Unit

3618

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☒ Responsive to communication(s) filed on 23 July 2008.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☒ Claim(s) 9-21 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 9-21 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 21 March 2005 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO/5508)
- 4) ☐ Interview Summary (PTO-413)
- 5) ☐ Notice of Informal Patent Application
- 6) ☐ Other: \_\_\_\_\_
- Paper No(s)/Mail Date \_\_\_\_\_

### **DETAILED ACTION**

In response to applicant's arguments, the restriction requirement has been withdrawn. An action on the merits of claims 9-21 follow.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

1. Claims 9-21 are rejected under 35 U.S.C. 102(b) as being anticipated by Headrick (US Patent 4,651,846).

Headrick teaches a prime mover control device of a construction machine that includes: a hydraulic pump driven by a prime mover (engine); an actuator driven with pressure oil discharged from the hydraulic pump (21); and a control valve (28, 30) that controls a flow of the pressure oil from the hydraulic pump (21) to the actuator in response to an operation of a first operating member, comprising: a first set device (42) that sets a first set rotation speed of the prime mover according to the operation of the first operating member; a second set device (44) that sets a second set rotation speed of the prime mover according to an operation of a second operating member; a selection member that selects one of a first mode and a second mode; and a rotation speed control device that controls a prime mover rotation speed to match with a maximum value between the first set rotation speed and the second set rotation speed

when the selection member selects the first mode, and that controls the prime mover rotation speed to match with the second set rotation speed when the selection member selects the second mode; the first operating member is a foot-operated operating member (78), and the second operating member is a hand-operated operating member (72); the selection member is installed in the vicinity of the second operating member; the actuator is a traveling motor (37); a determination device that determines a traveling state and a work state; wherein: when the traveling state is determined with the determination device, the first set device sets the first set rotation speed to a larger value compared to a value to be set when the work state is determined and the determination device comprises a brake detection unit that detects a non-operating state of a brake and a neutral detection unit that detects a neutral operation of the first operating member, and determines the traveling state when the non-operating state of the brake is detected and the neutral operation is not detected.

### ***Conclusion***

2. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

Kempf et al. shows a drive system of a utility vehicle.

Kenyon et al. shows all wheel drive for motor grades.

3. Any inquiry concerning this communication or earlier communications from the examiner should be directed to BRIDGET AVERY whose telephone number is (571)272-6691. The examiner can normally be reached on Monday-Thursday from 8:00AM to 5:30PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Christopher Ellis, can be reached on 571-272-6914. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

/Christopher P Ellis/  
Supervisory Patent Examiner, Art  
Unit 3618

/Bridget Avery/

Examiner, Art Unit 3618